

## **U.S. Department of Justice**

United States Attorney Southern District of New York

The Silvio J. Mollo Building One Saint Andrew's Plaza New York, New York 10007

July 28, 2019

<u>Via ECF & Email</u> Honorable Paul A. Engelmayer United States District Judge Southern District of New York

Email: EngelmayerNYSDChambers@nysd.uscourts.gov

Re: <u>United States v. Sajmir Alimehmeti</u>,

16 Cr. 398 (PAE)

Dear Judge Engelmayer:

The Government respectfully submits this letter in response to the defendant's July 28, 2019 submission. As discussed in more detail below, the defendant's motion for an order compelling the Government to produce an additional copy of the discovery is moot. The Government has never opposed the request for another copy, including with respect to the issue raised by counsel on July 26, 2019. To the contrary, the Government has and will continue to work in good faith to make the materials available to the defendant, even if counsel elects not to proceed efficiently pursuant to the Government's unanswered request on July 26 for access to their copies of the previously produced data.

On May 20, 2019, defense counsel requested that a new copy of all Rule 16 discovery be provided to the defendant—in addition to the set that was produced to prior counsel at the beginning of the case beginning in the summer of 2016. While counsel now asserts that the duplicate production is "necessary to our preparations for sentence," the request was conveyed over a year after the defendant's February 21, 2018 guilty plea. There was "considerable back and forth" relating to the defense request because prior to the defendant's plea he worked inside the prison facility with Ahmad Khan Rahimi, the Chelsea Bomber, to disseminate terrorist propaganda from discovery materials. (*See* Dkt. No. 72 at 35). The defendant had direct access to the unclassified discovery for almost 18 months before the Government learned that he was engaged in that dangerous conduct, at which point the materials were seized. Nevertheless, on May 23, 2019, the Government agreed to try to accommodate counsel, and has since that time worked in good faith to provide new copies of the materials to the defendant in a manner consistent with the pending Special Administrative Measures.

To be clear, the defendant once again has access to the vast majority of the pertinent discovery in the case inside the facility, and counsel has had access to all of those materials, via prior counsel, since around the time that they appeared in the case on January 7, 2018. The defendant's July 28, 2019 letter relates to a July 26 question from counsel regarding forensic images of certain electronic media. When counsel brought this issue to the Government's attention, the Government responded on the same day with a request for the hard drives from the initial production to the defense so that the Government could quickly copy the materials in question and make them available to the defendant. The reason for that request was that in the experience of the undersigned, it may take a week, if not more, for the FBI to retrieve from its storage facilities the data in question, which was produced to the defendant approximately three years ago.

Rather than responding to the Government's request, however, counsel submitted a letter to the Court seeking an order to compel production. The Government respectfully submits that no order is necessary because the Government is working to provide the defendant with a new copy of the materials. To reiterate, if speed is as important as counsel has suggested to the Court, the fastest way to accomplish their objective is for counsel to allow the Government to copy the data from previously produced drives. If for whatever reason counsel elects not to pursue that option, the Government will retrieve the materials from the FBI and provide an additional copy to the defendant when it is available.

Respectfully submitted,

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Cc: Defense Counsel (Via ECF & Email)